

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NEIGHBORS FOR RATIONAL
DEVELOPMENT, INC.,

Plaintiff,

vs.

CIV No. 99-0059 JC/LFG

GAIL NORTON, Secretary of the
Interior, NEAL A. MCCALED, Assistant
Secretary for Indian Affairs,
ROBERT BARACKER, Area Director,
Albuquerque Area Office, Bureau of
Indian Affairs,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER came on for consideration of Plaintiff's Memorandum Relating to the Significance and Applicability of Federal Defendants' Supplementation of the Administrative Record, filed August 1, 2001 (*Doc. 77*), and the Court's Memorandum Opinion and Order, filed December 18, 2001 (*Doc. 81*), pursuant thereto, requesting a hearing concerning two issues: (1) Is it appropriate for the Secretary to rely on summaries of his subordinates in rendering his decision? (2) Do the summaries so distort the administrative record that the Secretary breached his duty to accord "consideration" to the relevant factors?" Specifically, what factors were distorted in the summaries when compared to the administrative record?

Upon hearing counsels' oral arguments on January 21, 2002, the Court finds that the Secretary's reliance on the "contemporaneous explanation" by the Area Director, and, in turn, the Area Director's reliance on the AIPC's application, do not frustrate effective judicial review. Moreover, Plaintiff did not persuade the Court that the summaries so distort the record as to make

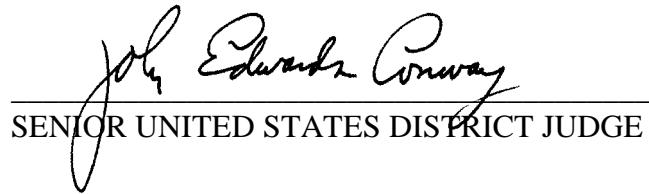
the Secretary's decision arbitrary and capricious.

Wherefore,

IT IS SO ORDERED that the Court's Memorandum Opinion and Order, filed June 29, 2000 (*Doc.54*), is vacated in part and the Secretary's decision is reinstated and affirmed. The Court's denial of attorney's fees, however, is affirmed.

IT IS FURTHER ORDERED that Plaintiff's Memorandum Relating to the Significance and Applicability of Federal Defendants' Supplementation of the Administrative Record, filed August 1, 2001 (*Doc. 77*), is denied as moot.

Dated January 24, 2002.



John Edwards Conway
SENIOR UNITED STATES DISTRICT JUDGE

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